

## **REMARKS/ARGUMENTS**

### **A. In the Specification**

No paragraphs have been amended in the specification to clarify previously disclosed matter and/or correct language, reference labeling, figure description, and/or syntax.

### **B. Pending Claims**

1. Applicant acknowledges that claims 1-46 were received for consideration but were cancelled in response to a communication filed on 10/03/2001. Applicant also acknowledges that preliminary amendments to the claims were filed on 07/09/2001, with new claim 42.

2. Applicant acknowledges that the numbering of the claims as presented was not in accordance with 37 C.F.R. 1.126, and that when new claims are presented, they must be numbered consecutively beginning with the number text following the highest numbered claims previously presented.

3. Applicant acknowledges that the incorrectly numbered new claim 42 has been renumbered as claim 47. Claims 47 has been amended to correct language, syntax, avoid the citation of the prior art, and/or point out the specific features of Applicant's invention with greater clarity. No claims have been cancelled. Claim 48 has been added. Support for claim 48 is found in paragraphs [0062] and [0063] of patent application publication number US 2002/0017560 A1. No new matter has been added.

### **C. Correction of Inventorship**

4. Applicant acknowledges that Examiner has contacted Pinchus Laufer with respect to removing Denise Jeffreys from the list of names inventors and requested Richard Clarke to file a corrected oath/declaration naming the two inventors, Robert Mos and Clay Von Mueller. Attached hereto is a supplemental oath/declaration naming proper inventors in this application, namely Robert Mos and Clay Von Mueller.

**D. Double Patenting**

5. Claim 47 was provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 43 and 46 of U.S. application serial number 09/901,846. Applicant acknowledges that this is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. Applicant also acknowledges that a timely filed terminal disclaimer in compliance with 37 C.F.R. 1.321(c) may be used to overcome a provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application, and further, that a registered attorney or agent of record can sign a terminal disclaimer.

Accordingly, attached hereto is a terminal disclaimer filed in compliance with 37 C.F.R. 1.321(c) and properly signed by Richard D. Clarke, the registered attorney of record. Therefore, Applicant respectfully requests that the double patenting rejection of claim 47 be removed.

**E. In the Claims**

***Regarding the Claim Rejections under 35 U.S.C. 112***

6. Applicant acknowledges the quotation of the appropriate paragraph of 35 U.S.C. 112 that forms the basis for the rejections under this section made in the office action. Claim 47 was rejected under the second paragraph of 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention.

As per claim 47, claim 47 was deemed to be indefinite as claim 47 recites "...in said memory device...", but does not clearly point out which "memory device", as claim 47 contains in the preamble "a secondary spatially encoded memory device", in paragraph (a) "a memory device having data..." and in paragraph (b) "a medium incorporating a spatially encoded memory device..." As a result, Applicant has amended claim 47 to clarify the reference to the proper memory device. No new matter was added.

***Regarding the Claim Rejections under 35 U.S.C. 102***

7. Applicant acknowledges the quotation of the appropriate paragraph of 35 U.S.C. 102 that forms the basis for the rejections under this section made in the office action. Claim 47 was rejected under 35 U.S.C. 102(b) as being anticipated by Fernandez (U.S. 5,616,904). Applicant respectfully disagrees with this anticipation rejection in light of the arguments presented below.

8. As per claim 47, amended claim 47 discloses a hybrid chip card with enhanced security for storing information comprising a memory device having data encrypted with a signature derived from a series of arbitrary spatial relationships of spatially encoded data, a medium incorporating a spatially encoded memory device, fixed to the exterior of the hybrid chip card for the purpose of storing said spatially encoded data, and a processing element that uses said signature to access the encrypted data in said memory device. Fernandez does not disclose a hybrid chip card that contains both a memory device having encrypted data and a processor that uses a signature to access the encrypted data in the memory device. Fernandez discloses a system wherein the reader device, not the card itself, contains internal memory within a processor and memory external to the processor (*see* col. 5, lines 53-67; col. 6, lines 1-3).

Applicant's invention is unique from Fernandez in that the inclusion of a processor and memory device on the actual card provides additional security to the information stored on the card. In Applicant's invention, outputs detected by a read apparatus must match up with the data stored within the card before the card can be verified as authentic and the stored information can be accessed. Fernandez does not include this additional layer of security. As a result, if a person compromises the integrity of the reader disclosed in Fernandez, the card information will be more vulnerable as compared to Applicant's invention because there are less protection measures integrated within the card itself. Thus, Applicant's invention is not anticipated by Fernandez.

Similarly, Fernandez also does not disclose a hybrid chip card that includes data encrypted using a jitter signature as disclosed in Applicant's invention. Fernandez discloses a system wherein data is encoded on a magnetic card and a read apparatus collects timing data that

is then stored as a jitter value on the read apparatus itself. Applicant's invention stores data on the hybrid chip card itself, the data being encrypted by using a jitter signature collected from spatially encoded data stored on the card. The encryption of data is an important security feature that serves as an additional barrier to prevent duplication and replication of the card. Because Applicant's invention involves encrypting the data stored on the hybrid chip card using the jitter signature from spatially encoded data stored on the card, a feature not disclosed in Fernandez, Applicant's invention is not anticipated by Fernandez. Therefore, as amended, Applicant now believes that claim 47 is in condition for allowance.

9. Applicant appreciates that Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of Applicant. Applicant has considered the reference cited in its entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by Examiner.

10. Applicant acknowledges that the prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Application S/ N 09/901,920  
Amendment/Response Dated December 15, 2005  
Reply to Office Action Mailed on June 21, 2005

### CONCLUSION

All of the objections and rejections raised by the Examiner have been addressed by Applicant. Attorney for Applicant has carefully reviewed the cited reference, namely the Fernandez patent, and believes that the new claims presently on file in the subject application are patentably distinguishable with respect to the prior art. In view of the amendments to the disclosure and the remarks submitted herein, Applicant submits that all of the new claims of record are in condition for allowance and respectfully requests that a Notice of Allowance be issued in this case in due course.

If it is felt for any reason that direct communication with Applicant's attorney would serve to advance prosecution of this application to allowance, the Examiner is invited to contact the undersigned, attorney of record in this case, Richard D. Clarke, Esq., at one of the listed below numbers or at his below listed e-mail address.

Dated: December 15, 2005

Respectfully Submitted,  
LAW OFFICE OF RICHARD D. CLARKE

By



**Richard D. Clarke**  
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